

ALCOHOLIC BEVERAGES <sup>1</sup>

## CHAPTER

1. INTOXICATING LIQUORS.
2. BEER.

## CHAPTER 1

INTOXICATING LIQUORS <sup>2</sup>

## SECTION

8-101. Prohibited generally..

8-101. Prohibited generally. Except when he affirmatively shows that he has express authority under state law, <sup>3</sup> it shall be unlawful for any person to receive, possess, store, transport, sell, furnish, or solicit orders for any intoxicating liquor within this municipality. "Intoxicating liquor" shall be defined to include whiskey, wine, "home brew," "moonshine," and all other intoxicating, spirituous, vinous, or malt liquors and beers which contain more than five percent (5%) of alcohol by weight. (1963 Code, § 2-101)

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<sup>1</sup>Municipal code references

Driving under the influence: sec. 15-104.

Minors in beer places: title 11, chapter 1.

State law reference

Tennessee Code Annotated, title 57.

<sup>2</sup>Charter reference

Intoxicating liquors: § 24.

<sup>3</sup>State law reference

Tennessee Code Annotated, title 39, chapter 17.

## CHAPTER 2

BEER<sup>1</sup>

## SECTION

- 8-201. Beer board--establishment, membership, organization, compensation.
- 8-202. Meetings of the beer board.
- 8-203. Record of beer board proceedings to be kept.
- 8-204. Requirements for beer board quorum and action.
- 8-205. Powers and duties of the beer board.
- 8-206. "Beer" defined.
- 8-207. Permit required for engaging in beer business.
- 8-208. Privilege tax.
- 8-209. Beer permits shall be restrictive.
- 8-210. Classes of consumption permits.
- 8-211. Interference with public health, safety, and morals prohibited.
- 8-212. Issuance of permits to persons convicted of certain crimes prohibited.
- 8-213. Prohibited conduct or activities by beer permit holders.
- 8-214. Revocation of beer permits.
- 8-215. Civil penalty in lieu of suspension.
- 8-216. Violations

8-201. Beer board--establishment, membership, organization, compensation. There is hereby established a beer board to be composed of three members nominated by the mayor and appointed by the city council. Such members shall serve for two (2) year terms beginning on June 1st of each odd numbered year. In case of a vacancy the city council shall, at its next meeting, appoint a new member for the unexpired term. No member of the beer board shall be engaged directly or indirectly in the business of selling, storing, distributing or manufacturing beer. Any member becoming so engaged shall automatically forfeit his office and cease to be a member of the beer board.

The beer board shall elect a chairman from among its members.

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<sup>1</sup>Municipal code references

Minors in beer places: title 11, chapter 1.

Tax provisions: title 5.

State law reference

For a leading case on a municipality's authority to regulate beer, see the Tennessee Supreme Court decision in Watkins v. Naifeh, 635 S.W.2d 104 (1982).

A new beer board shall be appointed every two years by the city council at its last regular meeting before the term of the old beer board expires. (1963 Code, § 2-201, as amended by Ord. dated Aug. 23, 1982, modified)

8-202. Meetings of the beer board. The beer board shall fix the time and place for its regular meetings. A special meeting may be called by the chairman provided he gives a reasonable notice thereof to each board member. The board may adjourn a meeting at any time to another time and place. All meetings of the beer board shall be open to the public. (1963 Code, 2-202, as amended by Ord. dated Aug. 23, 1982). The chairman shall also provide notice of special meetings to the Mayor, members of City Council, the City Attorney, the City Administrator, the Building Inspector and the Chief of Police. The City Attorney shall serve as legal counsel for the Beer Board and shall be present at all of its meetings.

8-203. Record of beer board proceedings to be kept. The city recorder or designee shall keep a complete record of the proceedings of all meetings of the beer board. The record shall be a public record and shall contain at least the following: The date of each meeting; the names of the members introducing and seconding motions and resolutions, etc., before the board; a copy of each such motion or resolution presented; the vote of each member thereon; and the provisions of each beer permit issued by the board. Beer board records shall be kept in the city recorder/treasurer's office. (1963 Code, § 2-203, as amended by Ord. dated Aug. 23, 1982)

8-204. Requirements for beer board quorum and action. The attendance of at least a majority of the members of the beer board shall be required to constitute a quorum for the purpose of transacting business. Matters before the board shall be decided by a majority of the members present if a quorum is constituted. Any member present but not voting shall be deemed to have cast a "nay" vote. (1963 Code, § 2-204, as amended by Ord. dated Aug. 23, 1982)

8-205. Powers and duties of the beer board. The beer board shall have the power and it is hereby directed to regulate the selling, storing for sale, distributing for sale, and manufacturing of beer within this municipality in accordance with the provisions of this chapter. (1963 Code, § 2-205, as amended by Ord. dated Aug. 23, 1982)

8-206. "Beer" defined. The term "beer" as used in this chapter shall mean and include all beers, ales, and other malt liquors having an alcoholic content of not more than five percent (5%) by weight. (1963 Code, § 2-206, as amended by Ord. dated Au. 23, 1982)

8-207. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, distribute for sale, or manufacture beer without first making application to and obtaining a permit from the beer board. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57-5-101(b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of Lenoir City.



Each applicant must be a person of good moral character and he must certify that he has read and is familiar with the provisions of this chapter. Applications shall be submitted to the office of the City Recorder/Treasurer, which shall immediately distribute copies of said applications to the members of the Beer Board, the Mayor, members of City Council, the City Administrator, the City Attorney, the Building Inspector and the Chief of Police. Along with the application, the applicant shall submit a written statement from a registered land surveyor certifying that the building or site where beer is to be sold does not violate the distance requirements set forth in Section 8-211 below.

8-208. Privilege tax. There is hereby imposed on the business of selling, distributing, storing or manufacturing beer a privilege tax of one hundred dollars (\$100). Any person, firm, corporation, joint stock company, syndicate or association engaged in the sale, distribution, storage or manufacture of beer shall remit the tax on January 1, 1994, and each successive January 1, to the City of Lenoir City, Tennessee. At the time a new permit is issued to any business subject to this tax, the permit holder shall be required to pay the privilege tax on a prorated basis for each month or portion thereof remaining until the next tax payment date.

8-209. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, distributing, and manufacturing. Beer permits for retail sale of beer may be further restricted by the beer board so as to authorize sales only for off premises consumption. Beer permits for Class 2 on premises consumption shall be limited to 1 permit. It shall be unlawful for any beer permit holder to engage in any type or phase of the beer business not expressly authorized by his permit. It shall likewise be unlawful for him not to comply with any and all express restrictions or conditions which may be written into his permit by the beer board.

8-210. Classes of consumption permits. Permits issued by the beer board shall consist of three classes:

- (1) Class 1 On Premises Permit. A Class 1 On Premises Permit shall be issued for the consumption of beer only on the premises. To qualify for a Class 1 On Premises permit, an establishment must, in addition to meeting the other regulations and restrictions in this chapter:
  - (a) be primarily a restaurant or an eating place; and
  - (b) be able to seat a minimum of thirty people, including children, in booths and at tables, in addition to any other seating it may have; and
  - (c) have all seating in the interior of the building under a permanent roof; and

In addition, the monthly beer sales of any establishment which holds a Class 1 On premises Permit shall not exceed fifty percent (50%) of the gross sales of the establishment. Any such establishment which for two consecutive months or for any three months in any calendar year has beer sales exceeding fifty percent (50%) of its gross sales, shall have its beer permit revoked.

(2) Class 2 On Premises Permit. Other establishments making application for a permit to sell beer for consumption on the premises, which do not qualify, or do not wish to apply for, a Class 1 On Premises Permit, but which otherwise meet all other regulations and restrictions in this chapter, shall apply for a Class 2 On Premises Permit.

(3) Class 3 Off Premises Permit. An off premises permit shall be issued for the consumption of beer only off the premises. To qualify for an off premises permit, an establishment must, in addition to meeting the other regulations in this chapter:

- (a) be a grocery store or a convenience type market; and
- (b) in either case, be primarily engaged in the sale of grocery and personal and home care and cleaning articles, but may also sell gasoline.

8-211. Interference with public health, safety, and morals prohibited. No permit authorizing the sale of beer will be issued when such business would cause congestion of traffic or would interfere with schools, churches, or other places of public gathering, or would otherwise interfere with the public health, safety, and morals. In no event will a permit be issued authorizing the manufacture or storage of beer, or the sale of beer within three hundred (300) feet of any hospital, school, church or other place of public gathering. The distances shall be measured in a straight line<sup>1</sup> from the nearest point on the property line upon which sits the building from which the beer will be manufactured, stored or sold to the nearest point on the property line of the hospital, school, church or other place of public gathering. No permit shall be suspended, revoked or denied on the basis of proximity of the establishment to a school, church, or other place of public gathering if a valid permit had been issued to any business on that same location as of January 1, 1993, unless beer is not sold, distributed or manufactured at that location during any continuous six-month period after January 1, 1993.

8-212. Issuance of permits to persons convicted of certain crimes prohibited. No beer permit shall be issued to any person who has been convicted for the possession, sale, manufacture, or transportation of intoxicating liquor, or any crime involving moral turpitude within the past ten (10) years. No person, firm, corporation, joint-stock company, syndicate, or association having at least a five percent (5%) ownership interest in the applicant shall have been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years.

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<sup>1</sup>State law reference

See Watkins v. Naifeh, 625 S. W. 2d 104 (Teen. 1982) and other cases cited therein which establish the straight line method of measurement.



Change 3, January 14, 2013

8-213. Prohibited Conduct or Activities by Beer Permit Holders: It shall be unlawful for any beer permit holder to:

- (1.) Employ any person convicted for the possession, sale, manufacture, or transportation of intoxication liquor, or any crime involving moral turpitude within the past ten (10) years.
- (2.) Employ any minor under eighteen (18) years of age in the sale, storage, distribution or manufacture of beer.
- (3.) Make or allow any sale of beer between the hours of 3:00 A.M. and 8:00 A.M. during Monday through Saturday and may not be sold on Sundays between the hours of 3:00 A.M. and 10:00 A.M.
- (4.) Make or allow any sale of beer to a person under twenty-one (21) years of age.
- (5.) Allow any person under twenty-one (21) years of age to loiter in or about his place of business.
- (6.) Make or allow any sale of beer to any intoxicated person or to any feeble-minded, insane, or otherwise mentally incapacitated person.
- (7.) Allow drunk persons to loiter about his premises.
- (8.) Deleted
- (9.) Allow pool or billiard playing the same room where beer is sold and/or consumed without a Class 1 On Premises Permit or a Class 3 Off Premises Permit.
- (10.) Fail to provide and maintain separate sanitary toilet facilities for men and women. (as amended by Ord. #2003-6-9-1545, June 2003, and Ord.#2005-10-24-1711-C, Oct. 2005)

8-214. Revocation of beer permits. The beer board shall have the power to revoke any beer permit issued under the provisions of this chapter when the holder thereof is guilty of making a false statement or misrepresentation in his application or of violating any of the provisions of this chapter. However, no beer permit shall be revoked until a public hearing is held by the board after reasonable notice to all the known parties in interest. Revocation proceedings may be initiated by the police chief or by any member of the beer board.

8-215. Civil penalty in lieu of suspension. The beer board may, at the time it imposes a revocation or suspension, offer a permit holder the alternative of paying a civil penalty not to exceed \$1,500 for each offense of making or permitting to be made any sales to minors or, a civil penalty not to exceed \$1,000 for any other offense. If a civil penalty is offered as an alternative to revocation or suspension, the holder shall have seven (7) days within which to pay the civil penalty before the revocation or suspension shall be imposed. If the civil penalty is paid within that time, the revocation or suspension shall be deemed withdrawn.

8-216. Violations. Except as provided in § 8-215, any violation of this chapter shall constitute a civil offense and shall, upon conviction, be punishable by a penalty under the general penalty clause of this code. Each day a violation shall be allowed to continue shall constitute a separate offense.